

28 JUN 2000



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Patent Cooperation Treaty
Legal Office

Address: Assistant Commissioner for Patents
Box PCT
Washington, D.C. 20231

Allan Ratner
RATNER & PRESTIA
Suite 301, One Westlakes, Berwyn
P.O. Box 980
Valley Forge, PA 19482-0980

In re Application of
Gwenyth Jane FARRAR et al.
Application No.: 09/155,708
PCT No.: PCT/GB97/00929
Int. Filing Date: 02 April 1997
Priority Date: 02 April 1996
Attorney's Docket No.: MUR-7520
For: GENETIC SUPPRESSION AND
REPLACEMENT

DECISION ON
PETITION
UNDER 37 CFR 1.181

This is a decision in response to applicant's "Communication" filed 20 December 1999. The Communication is being treated as a petition under 37 CFR 1.181 as applicant is requesting that copies of the documents filed 20 December 1999 be accepted as having been originally filed on 05 April 1999. The petition is GRANTED.

BACKGROUND

On 02 April 1997, applicant filed international application PCT/GB97/00929, claiming priority to British application 9606961.2, filed 02 April 1996. A Demand for international preliminary examination, in which the United States was elected, was filed on 27 October 1997. Accordingly, the thirty month period for paying the basic national fee in the United States expired at midnight on 02 October 1998.

On 02 October 1998, applicant filed a Transmittal Letter (Form PTO-1390) for entry into the national stage in the United States under 35 U.S.C. 371, accompanied by, *inter alia*, a copy of the international application, the requisite basic national fee, and an unexecuted declaration.

On 03 March 1999, the United States Patent and Trademark Office (PTO) mailed a "Notification of Missing Requirements Under 35 U.S.C. 371" (Form PCT/DO/EO/905) requiring an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge for providing the oath or declaration later than thirty months from the priority date. Applicant was given a one month extendable period for response.

On 13 December 1999, after receiving no response from applicant to the "Notification of Missing Requirements," the PTO mailed a "Notification of Abandonment" (Form PCT/DO/EO/909) indicating the application was abandoned.

On 20 December 1999, applicant filed the instant petition requesting that copies of the papers filed therewith be accepted as having been originally filed on 05 April 1999. The petition included, *inter alia*, copies of the executed declaration, date stamped postcard receipt, Express Mail label number EL324657470US, transmittal letter and fee calculation sheet, small entity statement, and certificate of mailing by Express Mail.

DISCUSSION

MPEP at section 503 states, in part:

"A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO."

Although PTO records do not confirm the submission of papers in response to the "Notification of Missing Requirements", the evidence submitted by applicants, which itemizes the filing of a transmittal letter, executed declaration, fee for submitting the declaration later than thirty months from the priority date, small entity statement, assignment, and recording fee on 05 April 1999, is sufficient to establish that such papers were filed on 05 April 1999.

CONCLUSION

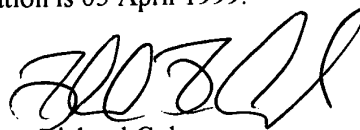
For the reason above, the "Notification of Abandonment" mailed 13 December 1999 is hereby VACATED.

The application is being returned to the DO/EO/US for further processing in accordance with this decision. Applicant will be notified shortly of the outcome of this processing.

The 35 U.S.C. 371 and 102(e) date of this application is 05 April 1999.



Kimberly Jordan
PCT Legal Detailee
PCT Legal Office



Richard Cole
PCT Legal Examiner
PCT Legal Office

Telephone: (703) 308-1315
Facsimile: (703) 308-6459